

(1986) 01 KAR CK 0045

In the Karnataka High Court

Case No : Writ Petns. 17651 and 18274 of 1984

Chandrakanth Narayan Nayak

APPELLANT

Vs

Deputy Commissioner for Transport, Belgaum and Another

RESPONDENT

Date of Decision : 17-01-1986

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Motor Vehicles Act, 1939 — Section 22, 33 (1) (b), 42

Citation : AIR 1987 Kar 52 : (1986) ILR (Kar) 2878

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : A.S. Viswanath, for the Appellant; Abdul Khader, Govt. Pleader, for the Respondent

Judgement

1. In these petitions under Arts. 226 and 227 of the Constitution, the petitioner has sought for quashing the orders dt. 2-7-1984 bearing No. DSA 54/J/CNW3630/DWD/84-85 (Annexure-A) and 19-7-1984 bearing No. DSA.83/J. CNW3630/DWD/84-85 (Annexure-B) passed by the 2nd respondent; and also the order D/- 19th Oct., 1984 passed by the first respondent in No.DCT.RGN.APLS.13 and 17/84-85, produced as Annexure-C.

2.The petitioner is a registered owner of the vehicle bearing Registration No. CNW/3630. It is a non-transport omni bus and taxed accordingly. Show-cause notices were issued to the petitioner under S. 33(I)(b) of the Motor Vehicles Act, 1939 (hereinafter referred to as the " Act"), to show cause as to why the registration Certificate of the vehicle in question should not be suspended for carrying passengers on hire without a permit. The various dates on which the vehicle in question was used for conveying the passengers on hire and without a permit, and the routes on which the vehicle was found carrying the passengers on hire were also stated in the notices. According to the show cause notices, on five occasions, the vehicle in question had been used for carrying passengers on hire without a permit. In the instant case, we are only concerned with the use of

the vehicle on four occasions. In respect of these violations, there are criminal cases filed against the driver of the vehicle. At the time these cases were decided by the 2nd respondent, criminal cases were pending. The petitioner had sent replies to the show cause notices. The main stand taken by the petitioner was that the criminal cases were pending against the driver and until they were decided, the further proceedings in these cases be stayed. In his two replies, the petitioner also stated that the passengers found in the vehicle were not being conveyed on hire but some of them were family members and the others were friends. In other cases, there was no such defence pleaded in tile reply. The 2nd respondent did not accept the explanations offered by the petitioner and accordingly passed orders suspending the Registration Certificate of the vehicle for a period of four months in one case as per the order produced as Annexure-A; and IS days as per the order produced as Annexure-B. The petitioner preferred two appeals being Appeals Nos. DCT.RGN.13 and 17/84-85 before the first respondent who was of the view that having regard to a Full Bench decision of this Court in Writ Petn. No. 693 of 1970 (T. V. Gouda v. State of Mysore reported in ILR (1975) Kar 895), pendency of criminal cases did not conic in the way of the authority to exercise jurisdiction under S. 33(l)(b) of the Act. Accordingly, he over ruled the contention raised by the petitioner appellant that pending decision in the criminal cases, the hearing of the cases be postponed. The first respondent agreed with the conclusion reached by the 2nd respondent and accordingly dismissed the appeal. Being aggrieved by the aforesaid orders, these writ petitions are preferred.

3. Sri A. S. Viswanath, learned Counsel appearing for the petitioner. Submits that in the case of criminal prosecution. there will be a detailed enquiry and same set of facts will be involved; therefore. Once a competent Court on going into the matter thoroughly. Comes to the conclusion one-way or the other. it is binding upon the authorities exercising power under S. 33(l)(b) of the Act. Further, the procedure provided under S. 33(l),b) of the Act, is of a very summary nature; therefore the finding recorded on the same set of facts in a proceeding after holding an elaborate enquiry by a competent Criminal Court must prevail over the authority exercising the power under S. 330)(b) of the Act-, hence the respondents ought to have stayed the proceeding pending decision in the criminal cases. Learned Counsel has placed reliance on a decision of this Court reported in Muthaya Moily Vs. Dakshina Kannada, On the contrary, Sri Abdul Khader, learned High Court Government Pleader, contends that as held by a Division Bench of this Court in Writ Petn. 2234/69, decided on 12-6-1972 (K. M. Moun v. Asst. Superintendent of Police, it is not necessary to hold an elaborate enquiry and what is necessary is to serve a show cause notice on the owner of the vehicle and make available to him the material which the authority proposes to rely upon and to afford an opportunity to file objections to it and consider the same if filed and decide the matter.

4. In Muthaya Moily Vs. Dakshina Kannada, learned single Judge has held as follows:

"The decision of the Criminal Court acquitting the petitioner was rendered on 28-4-1978, that is, after the registration certificate was suspended by the R.T.O Counsel for the petitioner wants now to take advantage of the decision of the Criminal Court to invalidate the action taken by the R.T.O. He urged that the same set of facts constituting the alleged offence before the Criminal Court was the foundation for action by the R.T.O. and since the petitioner was acquitted in the former, the penalty imposed by the latter cannot be sustained.

Counsel appears to be right in his submission. It is a well established principle that the decision of a Civil or Criminal Court of competent jurisdiction in respect of an offence shall be binding on quasi-judicial authorities in matters pertaining to identical question, Since the petitioner was acquitted by the Criminal Court. the order of the R.T.O. suspending the registration certificate of the vehicle for the same offence cannot now be sustained."

Whereas in T. V. Gouda's case ILR 1975 Kar 895 a Division Bench of this Court referred the following question to a Full Bench:

"Whether an order of a Criminal Court acquitting the accused on the merits of a case would bar the disciplinary authority from holding him guilty and imposing punishment in disciplinary proceeding conducted under the Mysore (Karnataka) Civil Services (Classification, Control and Appeal) Rules, on the basis of the same facts and accusations in respect of which he was tried and acquitted by the Criminal Court".

On considering the decisions of the Supreme Court reported in S.A. Venkataraman Vs. The Union of India (UOI) and Another, (The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, (Delhi Cloth and General Mills Ltd. v. Khushal Bhan); S. Pratap Singh Vs. The State of Punjab, : 1965 II LLJ 153 SC) (J. K. Cotton Spinning and Weaving Co. v. Its Workmen) and on overruling the two Divisional Bench decisions of this Court in P. Ekambaram's case 1961 39 Mys LJ 1066 : AIR 1962 Mys 84) and Mahinuddin Alisab Kazi's case (1964) 1 Mys 188, the Full Bench answered the aforesaid question as follows:

"An order of a criminal Court acquitting an accused on the merits of a case would not bar the disciplinary authority from holding him guilty and imposing punishment in disciplinary proceedings under the Mysore (Karnataka) Civil Services (Classification, Control and Appeal) Rules, on the basis of the same facts and accusations in respect of which he was tried and acquitted by the criminal Court."

In the course of the order, the Full Bench while referring to the contention as to whether it would make any difference in the matter of trial by a Criminal Court and the proceeding before the stated authority, has observed thus:

"21. From the aforesaid two decisions relied upon by the learned First Additional Government Advocate, the following points of distinction between the criminal proceedings and the disciplinary proceedings emerge

(1) A disciplinary proceeding is not a criminal trial.

(2) In criminal proceedings the purpose sought to be achieved is protection of the public while in disciplinary proceedings the purpose sought to be achieved is purity and efficiency of public service.

(3) A criminal Court requires high standard of proof for convicting an accused, while such a standard of proof is not required for finding a person guilty in disciplinary proceedings and it is enough if there is preponderance of probability of the delinquent's guilt.

(4) Unlike in a criminal proceeding, in a disciplinary proceeding the strict rules of evidence and the provisions of the Evidence Act do not apply.

(5) Initiation of disciplinary proceedings against a civil servant acquitted in a criminal trial on the same charge is not violative of any provision of law or principles of natural justice. Thus criminal proceedings and disciplinary proceedings undoubtedly operate in different fields. It is well settled that the finding given by a criminal court is irrelevant in a civil proceeding. For instance if an accused is acquitted of the offences of criminal misappropriation or breach of trust or cheating, a Civil Court can make a decree against him if there is evidence to fasten civil liability on him. It is not uncommon that even though a criminal court acquits an accused of a charge of rash and negligent driving, the Motor Accidents Claims Tribunal holds that his negligence is established and awards compensation for the death or injury resulting from his negligence. In such cases there is bound to be conflict between the decisions of the Civil Court and the Criminal Court. Can it be said that such a conflict would shake the confidence of the public in the Judiciary? Or can it be said that in such circumstances initiation of civil proceedings in spite of acquittal by the criminal Court would be improper or unfair or would amount to circumventing the acquittal made by a competent criminal Court?

22. Thus, we are unable to agree with the view taken by this Court in *Ekambaram and Mainuddin Alisab Kazi's* case that when a civil servant is acquitted in a criminal Court it would be improper circumvention of the order of acquittal made by the competent criminal court if the disciplinary authority enquires into the charge and holds him guilty on the very same evidence which was produced before the criminal Court and was disbelieved by it, and that the confidence of the public in the judiciary would be undermined. The view expressed in those two decisions that such acquittal by the criminal Court bars disciplinary proceedings on the same charge, conflicts with the decisions of the Supreme Court referred to above. Therefore, we are of the opinion that these two decisions do not lay down the law correctly. We, therefore, overrule those two decisions of this Court".

In addition to this it is also very pertinent to notice that in *Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others*, , it is observed thus :

"The question whether or not the departmental inquiry pending against the employee involved in the criminal case should be continued even after his acquittal in criminal cases is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honorably and completely exonerated of the charges it is not expedient to continue a departmental inquiry on the very same charges or grounds or evidence. However merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor its discretion in any way fettered".

Thus, it is clear that the acquittal does not take away the jurisdiction of the stated authority to initiate and continue the proceeding in accordance with the provisions of law. Therefore, in the light of the aforesaid Full Bench decision of this Court and also the decision of the Supreme Court in the case of Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others, it is not possible to follow the decision in Muthaya Moily Vs. Dakshina Kannada, inasmuch as the said decision is not in conformity with the opinion of the Full Bench. From the judgment it appears that the aforesaid decision of the Full Bench had not been brought to the notice of the Court. It is also pertinent to notice that the object of the proceeding under S. 33 of the Act is to disable or deprive the owner of the vehicle from using it, by suspending the registration certificate of the vehicle whereas the prosecution under S. 123 of the Act even though, among other things is also for using the vehicle without a permit, but it is directed against the driver and the registered owner of the vehicle who causes or allows a motor vehicle to be used in contravention of the provisions of S. 22 or without the permit required by sub-s. (1) of S. 42 of the Act etc.. in order to convict and punish them. Thus the objects of both the provisions are quite different. The facts required to be proved for proving the case under Ss. 33 and 123 of the Act are also quite different. Among other things a mere use of a transport vehicle without a permit in any public place whether or not such vehicle is actually carrying any passenger or goods is punishable under S. 123 (1) of the Act, whereas for the purpose of suspension of the registration certificate under S. 33(b) of the Act the facts that are required to be proved are that the vehicle has been, or is being, used for hire or reward without a valid permit for being used as such. Thus, in order to bring the case under S. 33(b) of the Act it has to be proved that not only that the vehicle had been used without a valid permit. but such use was for hire or reward. Therefore, it is also clear that the scope of both the proceedings is quite different and the facts required to be proved are also different. Hence the fact of conviction or acquittal under S. 123 of the Act for the use of the vehicle in violation of sub-s. (1) of S. 42 of the Act will not have any bearing on the proceeding under S. 33(b) of the Act. These aspects are also not brought to the notice of the Court in Muthaya Moily Vs. Dakshina Kannada,

5. Regarding the scope of the enquiry to be held under S. 33(b) of the Act. in Writ Petn. No. 2234 of 1969. dt. 12-6-1972. a Division Bench of this Court has

held thus :

"..... It is clear from the aforesaid provision that no detailed enquiry is contemplated for taking action under S. 13(l)(b) of the Act. What is required under S. 13(l)(b) of the Act. is that the authority must have reason to believe that the motor vehicle within its jurisdiction has been or is being used for hire or reward without a valid permit for being used as such. The authority can come to that conclusion only after giving the owner an opportunity of making any representation he may wish to make. After considering the representation that may be made by the owner, the authority has to pass an order giving reasons in writing in support of suspending the certificate of registration of the vehicle for the period specified in that order. The only right that the owner therefore has to make a representation. The section does not contemplate any elaborate enquiry much less recording evidence of witnesses in the presence of the owner of the vehicle. But the minim.1.1m safeguard or protection that is available to the owner of the vehicle is that he should be afforded an opportunity of making representation against the proposed action. The opportunity contemplated under S. 33 of the Act must be a real and effective opportunity and not an illusory one. It is therefore, necessary that the authority must make available to the owner of the vehicle the material on which it proposes to rely upon for taking action under S. 33 of the Act, so that the owner of the vehicle can satisfactorily exercise his right of making the representation. It was therefore obligatory in this case for the authority to have furnished the copies of the statements of the occupants of the car on which the authority proposed to rely upon for taking action under S. 33(l)(b) of the Act against the petitioner. As the copies of those statements were not furnished to the petitioner. We have to hold that the petitioner was not afforded an opportunity of making the representation as required under S. 33(l)(b) of the Act."

In the instant case. apart from the material contained in the show-cause notice and the reply submitted by the petitioner no other material is relied upon by the respondents. In the explanations submitted by him the petitioner took a special stand that the passengers found in the vehicle were not the passengers on hire but, some of them were members of his family and the remaining were his friends. but he did not produce any material along with the reply to prove that they were not the passengers on hire Therefore. it is not possible to hold that the respondents have acted in contravention of the decision of this Court in K. M. Mounhe Asst. Superintendent of Police. Writ Petn. No. 2214,69. dt. 12-6-1972. In this regard Sri Vishwanath. learned Counsel for the petitioner, submits that by the order passed under S. 331 1)(b) of the Act, the registration certificate of the vehicle is suspended: and as a result thereof the petitioner is deprived of his right to make use of the vehicle and follow the profession which he is following. It is submitted that the consequence of passing such an order is very serious inasmuch as it deprives the person concerned to make use of his property in accordance with law; therefore the decision of the Supreme Court in the case of The Government of Mysore and Others Vs. J.V. Bhat and Others, applies and as

such an opportunity to adduce evidence and of hearing were required to be afforded to the petitioner. Of course, the aforesaid decision of a Division Bench does not speak of affording an opportunity of hearing. The Supreme Court in the aforesaid decision has held that an enquiry should be held and an opportunity of hearing must be afforded because of the consequence that flows out of the proceeding even though there is no specific provision in the statute to that effect. Without deciding this contention and even applying the aforesaid decision of the Supreme Court to the case on hand it is not possible to hold that there is any such infirmity in the enquiry held by the 2nd respondent as it is not possible to hold that opportunity to adduce evidence and hearing was denied to the petitioner. The show cause notices issued to the petitioner clearly stated that it was open to the petitioner to appear either in person or through the counsel or through the authorized representative holding power of attorney before the 2nd respondent on a stated date and time for hearing and also to defend his case. That being so, an opportunity was afforded to the petitioner of hearing and also of producing evidence which the petitioner intended to rely upon in support of his special plea raised in two of his objections that the passengers were not conveyed on hire but they were the members of his family and friends. The petitioner himself did not avail of the opportunity, and adduce evidence. Under these circumstances, it is not possible to hold that the 2nd respondent committed an illegality or failed to afford an opportunity of hearing and adducing evidence to the petitioner. In the appeal, the petitioner has been heard and his contentions have been considered. Under these circumstances I do not see any justification to interfere with the order of the respondents.

6. The vehicle in question admittedly did not possess the permit. The authorities below have now found that on four occasions the vehicle was used for conveying passengers on hire. In fact- such use of the vehicle without permit has been very frequent, as such, it is not possible to hold that this has taken place unexpectedly or without any intention or under the circumstances enumerated in S. 123(2) of the Act. The registration certificate in the case involving four violations has been suspended for a period of four months and in the case of another violation it is suspended for a period of 15 days. It appears to me that 4 1/2 months is too long a period and it will be too harsh and excessive. Hence, it appears to me that it is just and sufficient, and the ends of justice will be met if the Registration Certificate of the vehicle in question for all the violations in question is suspended for a period of two months. It is ordered accordingly. The impugned orders shall accordingly stand modified. The petitioner shall surrender the registration certificate and other documents pertaining to the vehicle in question before the 2nd respondent and inform the 2nd respondent the place where the vehicle in question will be kept. If the petitioner fails to do so within six weeks from today, it is open to the first respondent to enforce the order in accordance with law.

7. For the reasons stated above the writ petition is disposed of accordingly.

8. Order accordingly.